

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN D HARPER

Claimant

FOUR EAST DINING LLC

Employer

APPEAL 21A-UI-01189-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Appellant (2)

Iowa Code § 96.5(3)a – Failure to Accept Work

Iowa Code § 96.6(2) – Filing – Timely Appeal

Iowa Admin. Code r. 871-24.35 – Filing

STATEMENT OF THE CASE:

On December 10, 2020, Susan Harper (claimant/appellant) filed an appeal from the July 2, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on May 11, 2020.

A telephone hearing was held on February 17, 2021. The parties were properly notified of the hearing. Claimant participated personally. Four East Dining LLC (employer/respondent) registered a number for the hearing but was not available at the number registered at the time of hearing and so did not participate.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the appeal timely?
- II. Did claimant refuse to apply for or accept an offer of suitable work?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Claimant was laid off from employer beginning on or about March 15, 2020, due to a governmental order to close restaurants. Employer called claimant back to work effective May 11, 2020. Claimant was willing and able to return to work but was not able to start on May 11, 2020, because that was the first day she was able to have her vehicle repaired. She informed employer she could not start back on May 11, 2020 but was happy to return on May 12, 2020 and continuing from that date. Employer told claimant not to return to work at all if she would not return on May 11, 2020. Employer made no further attempts to contact claimant for a return to work after that date. Claimant began work elsewhere a couple weeks later.

The Unemployment Insurance Decision was mailed to claimant at the above address on July 2, 2020. That was claimant's correct address at that time. Claimant did not receive the decision and so did not appeal until receiving subsequent decisions finding she had been overpaid benefits. She appealed shortly after receiving those decisions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's appeal was timely. The July 2, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on May 11, 2020 is REVERSED.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1)(a) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - (a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark on the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
 - (b)
 - (c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

There is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and the Administrative Law Judge has no authority to change the decision of representative if a timely appeal is not filed. *Franklin v. Iowa Dept. Job Service*, 277 N.W.2d 877, 881 (Iowa 1979). The ten-day period for appealing an initial determination concerning a claim for benefits has been described as jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the appealing party was constitutionally invalid. *E.g. Beardslee v. Iowa Dept. Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973). The question of whether the Claimant has been denied a reasonable opportunity to assert an appeal is also informed by rule 871-24.35(2) which states that "the submission of any ...appeal...not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission

was due to division error or misinformation or to delay or other action of the United States postal service.”

The record in this case shows that claimant never received the decision. Therefore, the appeal notice provisions were invalid. Claimant did not have a reasonable opportunity to file a timely appeal. Claimant appealed shortly after learning of the decision denying benefits. Claimant's appeal is therefore timely and the administrative law judge has jurisdiction to address the underlying issues.

Iowa Code § 96.5(3)a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge finds claimant did not refuse a recall to suitable work. Claimant is therefore not disqualified from benefits beginning May 11, 2020.

Claimant was willing and able to return to work but was not able to start on May 11, 2020, because that was the first day she was able to have her vehicle repaired. She informed employer she could not start back on May 11, 2020 but was happy to return on May 12, 2020 and continuing from that date. Employer told claimant not to return to work at all if she would not return on May 11, 2020. Employer made no further attempts to contact claimant for a return to work after that date. Claimant began work elsewhere a couple weeks later.

The administrative law judge notes that employer will not be charged for benefits paid, as the department has chosen not to charge employers for claims made by employees due to COVID-19 related unemployment.

DECISION:

The administrative law judge concludes the claimant's appeal was timely. The July 2, 2020 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant refused recall to suitable work on May 11, 2020 is REVERSED. Claimant did not refuse recall to suitable work.



Andrew B. Duffelmeyer
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February 26, 2021
Decision Dated and Mailed

abd/scn